HIGH COURT OF UTTARANCHAL AT NAINITAL

[Chapter VIII Rule 32(2)(b)]

Writ Petition No. 22 of 2005 (S/B)

Date of Decision: 4th January, 2006

Approved for reporting √

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Not approved for reporting

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 22 of 2005 (S/B)

Param Jeet Singh S/o Sri Harbansh Singh,
at present posted as Executive Engineer
(holding the charge of Superintending Engineer),
Minor Irrigation Division,
District Nainital. ……. Petitioner

Versus

1. State of Uttaranchal,
through Secretary,
Department of Minor Irrigation,
District Dehradun.
2. Chief Engineer,
Minor Irrigation,
Canal Road, Ballupur,
District Dehradun.
3. Sri Suresh Chandra, Assistant Engineer,
Minor Irrigation Sub Division,
Nainital, District Nainital.. …… Respondents

Mr. L.P. Naithani, Senior Advocate assisted by Mr. Rakesh Thapliyal, Advocate for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.
Mr. V.K. Bist, Senior Advocate assisted by Ms. Seema Sirohi, Advocate for respondent No. 3.

JUDGEMENT

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble Rajesh Tandon, J

CYRIAC JOSEPH, C.J.

1. The petitioner was appointed as Assistant Engineer in the Minor Irrigation Department on 16.04.1986 on the recommendation of the Public Service Commission. He was promoted as Executive Engineer w.e.f. 22.07.1997. Consequent on the promotion of Mr. Mohd. Umar to the cadre of Superintending Engineer, the post of Executive Engineer, Nainital Division fell vacant and by an order dated 18.11.2004, the petitioner was transferred and posted as Executive Engineer, Nainital Division. In the said order dated 18.11.2004 the petitioner was also given additional charge of Superintending Engineer, Haldwani Circle. The petitioner joined duty as Executive Engineer Nainital Division on 29.11.2004 and on the same date he also took over additional charge of Superintending Engineer, Haldwani Circle. The petitioner came to know that the Speaker of Legislative Assembly was interested in getting the petitioner transferred

out and giving the third respondent Sri Suresh Chandra, Assistant Engineer, Minor Irrigation Sub-Division, Nainital the additional charge of Executive Engineer Nainital Division. He also learnt that the Speaker had sent a letter to the Chief Minister suggesting to transfer him to somewhere else so that respondent no. 3 can be given charge of Executive Engineer, Nainital Division. The petitioner submitted Annexure 8 representation dated 17.02.2005 to the Secretary, Minor Irrigation Department against the proposed transfer. However, by Annexure 9 order dated 19.02.2005 passed by the first respondent the petitioner's transfer to Nainital Division was cancelled and the third respondent was given additional charge of Executive Engineer, Nainital Division. Aggrieved by the said order of transfer, the petitioner has filed this writ petition praying to quash Annexure 9 order dated 19.02.2005 and to direct the respondents not to implement the said order dated 19.02.2005.

2. According to the petitioner, pursuant to the transfer order dated 18.11.2004, he had joined duty as Executive Engineer, Nainital Division on 29.11.2004 and there was no valid reason or administrative exigency to cancel the said transfer within a period of three months. It is alleged that the impugned order of transfer was not passed in public interest but due to political pressure. The petitioner has also questioned the propriety of giving additional charge of Executive Engineer to respondent no. 3 who is not in the zone of consideration for promotion to the cadre of Executive Engineer.

3. This writ petition was admitted on 24.02.2005 and an interim order was passed staying the operation of the impugned order. On the strength of the interim order passed by this Court, the petitioner was continuing as Executive Engineer, Nainital Division holding additional charge of Superintending Engineer, Haldwani Circle. Though the respondents filed Civil Misc. Application No. 2030 of 2005 seeking modification of the interim order so as to enable the Superintending Engineer, Pauri Circle to hold additional charge of Superintending Engineer, Haldwani Circle, the said application was dismissed by this Court on 11.05.2005. In the order dated 11.05.2005, this Court observed that the petitioner may have a legitimate grievance about his transfer from the post of Executive

Engineer, Minor Irrigation Division, Nainital to the post of Staff Officer in the Office of the Chief Engineer at Dehradun, but normally he cannot have any right to insist that he should be given additional charge of the post of Superintending Engineer or that he should be allowed to continue to hold the additional charge of the Superintending Engineer. However, the Court refused to modify the interim order in view of the conduct of the respondents and in view of their persistent failure to file a counter affidavit on behalf of the Government. Later the first respondent filed a counter affidavit and the arguments in the writ petition were heard on 13.06.2005 and the judgment was reserved. Thereafter on 26.07.2005 the first respondent placed the petitioner under suspension pending disciplinary proceedings. Challenging the order of suspension, the petitioner filed Writ Petition No. 171 (S/B) of 2005 praying to quash the order of suspension. Though the writ petition was admitted, no interim order was passed staying the order of suspension. Hence, the petitioner has been continuing under suspension. Writ petition No. 171 of 2005 (S/B) was disposed of today quashing the order of suspension and directing the respondents to reinstate the petition in service forthwith. Therefore, even though the challenge against the transfer had become infructuous due to the suspension of the petitioner, the issue has revived consequent on the quashing of the suspension order by this Court.

4. In the counter affidavit filed on behalf of the first respondent, it is admitted that the petitioner who was posted as Executive Engineer in Dehradun was transferred as Executive Engineer Nainital Division vide order dated 18.11.2004. It is also admitted that the petitioner was given the additional charge of Superintending Engineer, Haldwani Circle for which no financial benefit was payable. The additional charge of Superintending Engineer, Haldwani Circle was a purely temporary arrangement and was liable to be withdrawn as and when the Government felt that the job assigned was not fulfilled or better arrangement was available. It is asserted that the Government has every right to transfer a Government official whose continuance on a post at a particular place is against public interest. The first respondent has admitted that the Speaker of the Legislative Assembly had complained against the petitioner. But according

to the first respondent, the Speaker being a public representative had every reason and right to point out the inaction on the part of the petitioner in his capacity as Executive Engineer, Nainital Division. It is pointed out that Nainital Division of the Minor Irrigation Department includes the assembly constituency of the Speaker. It is stated that through a letter dated 01.02.2005 the Speaker informed the Chief Minister who is also the Minister for Minor Irrigation Department that the works of Minor Irrigation Department in District Nainital were being adversely affected due to the continuous absence of the petitioner from the Division Office at Nainital. The Speaker also pointed out that because of the petitioner's negligence the supplementary budget demand of the Minor Irrigation Department under Accelerated Irrigation Benefits Programme was not made available to the Chief Engineer in time. It was further pointed out that other projects also could not be sent to the technical audit cell of the State in the absence of the Technical sanction to be granted by the Executive Engineer or Superintending Engineer concerned depending on the quantum of the estimate. According to the Speaker, because of the lapses on the part of the petitioner, no supplementary budget could be allocated under the Accelerated Irrigation Benefits Programme. It was further pointed out that no supply of cement, pipe and steel had been made in the district Nainital by the Division Office at Nainital due to the petitioner's inaction. According to the Speaker, because of non-supply of the construction material, the ear-marked works could not be completed and sanctioned budget could not be utilised before 31.03.2005. The Speaker also requested the Chief Minister to issue appropriate directions to transfer the petitioner from Minor Irrigation Division Nainital to elsewhere immediately. In the counter affidavit, the first respondent has denied the allegation that the Speaker is interested in the third respondent Sri Suresh Chandra. According to the first respondent, consequent on the transfer of the petitioner from the post of Executive Engineer, Minor Irrigation Division, Nainital, the Charge of Nainital Division was given to respondent no. 3 who is the senior Assistant Engineer who has completed six years and three months service in the department and is eligible for promotion to the cadre of Executive Engineer. According to the first respondent, the transfer of the petitioner was in public interest. The first respondent has

specifically denied the allegation that the Speaker of the Legislative Assembly was interested in giving additional charge of Executive Engineer of Nainital Division to the third respondent. The first respondent has categorically stated that though the Speaker had suggested to transfer the petitioner from Nainital Division, he did not make any suggestion as to who should be posted in the place of the petitioner in Nainital Division. The first respondent has also given certain details in the counter affidavit in an attempt to show that the Speaker was justified in complaining that the work in the Nainital Division was adversely affected by the inaction of the petitioner.

5. The third respondent also has filed a counter affidavit denying the allegations in the writ petition.

6. The petitioner has filed a rejoinder affidavit furnishing details to show that there was no inaction on his part and that the allegations made against him by the Speaker of the Legislative Assembly were baseless.

7. The only ground of attack against the impugned transfer is that it was not ordered in public interest or for administrative reasons, but due to political pressure. The petitioner has stated that the alleged political pressure was exerted by the Speaker of the Legislative Assembly. However, the contention of the first respondent is that the impugned transfer was ordered in public interest. Though the first respondent has admitted that the Chief Minister had received a letter from the Speaker of the Legislative Assembly suggesting that the petitioner may be transferred out of Nainital Division, the first respondent has denied the allegation that the Speaker was interested in giving additional charge of Executive Engineer of Nainital Division to the third respondent. It is categorically stated that the Speaker had not suggested as to who should be posted in the place of the petitioner.

8. In the above circumstances, the first question to be considered is whether the first respondent was right and justified in ordering the transfer of the petitioner on the basis of the letter of the Speaker of the Legislative Assembly. Admittedly, the Nainital Division of the Minor Irrigation Department includes the assembly constituency represented by the

Speaker. Being the representative of the People, the Speaker was entitled to bring to the notice of the Government any inaction on the part of a Government officer working in the area and any irregularity committed by such officer. Hence, the action of the Speaker of the Legislative Assembly in writing a letter to the Chief Minister to bring to the notice of the latter the inaction on the part of the petitioner and his continuous absence from the office which had adversely affected the minor Irrigation works in the Nainital Division, cannot be said to be wrong or improper. It was well within his rights and duties as the elected Representative of the People. The action of the Speaker in suggesting that the erring officer should be transferred out of the Division also cannot be said to be wrong or improper. The elected Representatives of the People have every right to bring to the notice of the Government the administrative lapses and irregularities in their constituencies and to make suggestions to rectify the defects and to improve the situation. If the situation calls for the transfer of the officer, the elected Representative of the People is entitled to demand such transfer also. There is noting illegal or improper in the Government acting upon such complaints or representations made by the elected Representatives of the People. The Government in a Parliamentary Democracy has not only the right but also the duty to consider such complaints or representations and to take appropriate action in accordance with law. But we hasten to add that before taking any action against the officer by way of transfer or disciplinary action, ordinarily, the Government should verify the facts. Government must ensure that the action is not taken on the basis of any motivated or baseless complaint. Therefore, neither the action of the Speaker in writing a letter to the Chief Minister complaining against the inaction of the petitioner, nor the action of the Government in acting upon the said letter is objectionable or illegal or improper. The said actions of the Speaker and the Government by itself do not vitiate the impugned transfer.

9. The next question is whether the first respondent was justified in ordering the transfer of the petitioner without conducting an enquiry into the allegations contained in the letter of the Speaker of the Legislative Assembly and without giving an opportunity to the petitioner to explain his

position. Transfer is an incident of service. It is not a punishment. The Government has every right to post its officers at the places of its choice. No Government employee has a right to insist that he should be posted in a particular place or office or, having been appointed at a particular place or office, he should be allowed to continue there for any particular period. Transfer of a Government employee may become necessary for various administrative reasons and in public interest. Though the Government has the power to transfer an employee at any time, the said power should be exercised by the competent authority fairly and in good faith. Since the transfer is not a punishment, it cannot be said that before ordering a transfer the Government employee should necessarily be given an opportunity to represent his case with regard to the proposed transfer. But if the transfer is made on the basis of any allegations or complaints, it is desirable that the complaints and allegations are got verified through appropriate officers before ordering the transfer. There is also no harm in giving an opportunity to the employee concerned to explain his position with regard to the allegations and complaints. After getting the complaints and allegations verified through appropriate officers and/or after considering the explanations of the employee concerned, the Government may decide whether the employee should be transferred or not. Such a procedure would ensure that no action is taken on the basis of frivolous or baseless or motivated complaints. Though this would be the ideal procedure, in every case the said procedure need not be and cannot be followed. The complaints and allegations may be such that the continued presence of the officer in the post/station is not in the interest of administration or in public interest. In such a situation, the Government may have to act swiftly without waiting for getting the facts verified. There may be situations where the complaints and allegations are made by very responsible persons furnishing necessary details and materials so that the Government is justified in transferring the officer without conducting further verification and giving an opportunity to the employee to explain his position. Hence each case has to be considered on the facts of that case. In this case, the complaint against the petitioner was made by none other than the Speaker of the Legislative Assembly whose assembly constituency falls within the Nainital Division of the Minor Irrigation Department. The complaint was

not made orally or in a clandestine manner. The Speaker of the Legislative Assembly has sent a letter in writing to the Chief Minister who is also the Minister for Minor Irrigation Department, bringing to the latter's notice the inaction and lapses on the part of the petitioner and the resultant public resentment against the petitioner. It was not a one-line letter demanding the transfer of the petitioner. The letter contained specific allegations of inaction and lapses on the part of the petitioner. In such circumstances, if Government thought it proper and necessary to transfer the petitioner from Nainital Division and decided to effect the transfer without conducting any further verification of the complaints and allegations and without giving opportunity to the petitioner to explain his position, we cannot find fault with the Government. In view of the allegations contained in the letter of the Speaker of the Legislative Assembly, it cannot be said that the impugned transfer was not in public interest. If there is inaction and lapses on the part of a Government employee in the discharge of his official duties, the transfer of the employee from the office/station may be necessary in public interest. In our view, merely because the Speaker of the Legislative Assembly wrote a letter to the Chief Minister and the said letter led to the transfer of the petitioner, it cannot be said that the transfer was ordered due to political pressure or extraneous pressure. We are also of the view that in the facts and circumstances of this case, the failure of the Government to get the facts verified or to give opportunity to the petitioner to explain his position, does not vitiate the impugned transfer.

10. Though the learned counsel for the petitioner contended that the allegations in the letter of the Speaker of the Legislative Assembly were baseless, we are not inclined to examine whether those allegations were baseless or not. We are only considering the question whether the impugned transfer was ordered due to political pressure as alleged by the petitioner. Even assuming that the allegations are later found to be baseless, it cannot affect the bona fides of the Government in deciding to transfer the petitioner. We are satisfied that the power of transfer was exercised by the first respondent bona fide and in public interest. In the circumstances of this case, the decision of the Government cannot be said to be arbitrary only for the reason that the Government did not get the

allegations verified or give an opportunity to the petitioner to explain his position. Such a procedure though desirable, may not be necessary or mandatory in every case.

11. For the reasons stated above, we hold that there is no merit in the writ petition and that it is liable to be dismissed. Hence the writ petition is dismissed.

(Rajesh Tandon, J.) **(Cyriac Joseph, C.J.)**

January 04, 2006
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